

The legislature is asked for nothing except the money to build and equip the hospital building.

It would be unwise economy and bad politics on the part of the economy bloc to kill this project on the general grounds that the legislature must refuse any and all requests for capital outlays.

The rejection of this extremely necessary clinic hospital would put a strong weapon into the hands of the economy bloc's enemies. It would permit them to say: "Here are men, women and children dying in the poorer counties because the legislature was too parsimonious to give them a fighting chance for life."

The *Examiner* believes that the legislature will see the wisdom of providing some capital expenditures and, among all of those proposed, none is worthier than this.—Editorial, *San Francisco Examiner*, March 28.

LETTERS†

Concerning Meeting of American Prison Association.

MEDICAL DEPARTMENT
CALIFORNIA STATE PRISON
AT SAN QUENTIN

April 26, 1941.

To the Editor:—Enclosed you will please find a letter from James A. Johnston, Warden of Alcatraz and President of the American Prison Association.

Warden Johnston has asked me to assist in bringing this meeting to the attention of the doctors. . . .

Yours very truly,
LEO L. STANLEY,
Chief Surgeon.

(COPY)

THE AMERICAN PRISON ASSOCIATION

Alcatraz, California,
April 24, 1941.

Dr. L. L. Stanley, Chief Surgeon
California State Prison
San Quentin, California

Dear Doctor:

Thank you very much for your letter of April 23, 1941, advising me about the California State Medical Society meeting at Del Monte, May 4-6. Your offer to put up a notice inviting the doctors to attend the American Prison Association Congress at the Fairmont Hotel, August 18-22, 1941, is very agreeable to me and I assure you that your thoughtfulness in that respect is very much appreciated.

If you deem it desirable, you may read this letter in which, in my capacity as president of the American Prison Association, I extend an invitation to all the members of the California State Medical Association to attend the sessions of the American Prison Association Congress at the Fairmont Hotel, San Francisco, August 18-22, 1941.

For the further information of your associates, may I say that the American Prison Association was organized in 1870. Its purpose is to study, develop, and constantly improve the methods for control of crime and correction of offenders. Within the membership of the organization are wardens of prisons, superintendents of reformatories, heads of juvenile agencies, medical officers of the institutions, psychiatrists, psychologists, educators, members of the judiciary, ministers, priests, social workers in or bordering on the fields of delinquency.

During the Congress there are general sessions and special sessions and discussion group meetings. The program for one day will be under the sponsorship and direction of physicians dealing generally with matters of health.

† CALIFORNIA AND WESTERN MEDICINE does not hold itself responsible for views expressed in articles or letters when signed by the author.

I really believe that many of the discussions would be interesting to members of the California State Medical Association and I cordially invite them to attend.

Sincerely,
JAMES A. JOHNSTON,
President.

Concerning Physicians' Samples.

To the Editor:—We have been asked by a number of advertisers to help discourage a movement to collect physicians' samples for British Relief.

By publishing the following news item you can ingratiate your JOURNAL with these important advertisers.

Very truly yours,
COÖPERATIVE MEDICAL ADVERTISING BUREAU.
H. L. Sandberg, Director.

As much as we individually might be in sympathy with the "Bundles for Britain" movement, one recent phase of it hardly has our approval.

At several points in the country there has been a movement to collect the samples left by pharmaceutical detail men in physicians' offices and include them in the shipments for British Relief. This is an expensive and uncontrolled way of supplying pharmaceutical products.

Most all of the pharmaceutical manufacturers have individually donated supplies with vitamin capsules and other needed pharmaceutical products to the British Relief at no charge.

The packaging of a sample increases the cost and if these samples are collected and sent to Britain, then the purpose for which they were intended, that is, for the use of physicians, is not accomplished, and the heterogeneous material that reaches British Relief probably would have little value. Many samples left physicians would be dangerous if used indiscriminately without the advice of a physician.

In some cases individual city and county medical societies have been asked to cooperate with the collection of these samples. It is our opinion that such cooperation should be refused for the obvious reasons stated.

H. L. S.

MEDICAL JURISPRUDENCE†

By HARTLEY F. PEART, ESQ.
San Francisco

Vasectomy and Salpingectomy Under California Law

PART I*

In recent years there has been considerable discussion pro and con, with respect to sterilization of humans. Sterilization involves social, economic, and legal problems with all of which physicians are vitally concerned. In this article we shall limit ourselves to a discussion of the legal aspects of sterilization, particularly emphasizing the duty and privileges of physicians.

It must be understood that we are not approaching the problem of human sterilization from a social point of view; that is to say, we are neither advocating sterilization nor opposing it; we are neither endeavoring to point out how it can be done with legal safety, nor are we endeavoring to discourage sterilization operations by erecting or magnifying legal obstacles. On the contrary, we shall merely endeavor to analyze those rules of law which, in our opinion, are applicable and that govern physicians who

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from and syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.

* Part II will appear in next month's issue.

undertake to determine whether or not a particular person should be sterilized.

Any discussion of the legal status of sterilization must be divided into: first, compulsory sterilization by state agencies; and, second, voluntary sterilization by private physicians. In turn, the second division should be subdivided into: first, the criminal law as applied to sterilization; and, second, the civil liability, if any, arising out of sterilization.

I. Compulsory Sterilization by the State

Status of Compulsory Sterilization.—California has become the leading state in development and application of the policy of sterilizing unfit persons. Of some eight or nine thousand compulsory sterilizations performed in this country up to 1938, approximately six thousand occurred in this state. These numbers have without doubt increased several thousand since 1938.

The California statutes under which these sterilizations have been performed are:

Section 6624 of the Welfare and Institutions Code, which provides:

The provisions of this section apply to any person who has been lawfully committed to any state hospital, and who is afflicted with, or suffers from, any of the following conditions:

- (a) Mental disease which may have been inherited and is likely to be transmitted to descendants.
- (b) Feeble-mindedness, in any of its various grades.
- (c) Perversion or marked departures from normal mentality.
- (d) Disease of a syphilitic nature.

Before any such person is released or discharged from a state hospital, the State Department of Institutions may, in its discretion, cause such person to be sterilized. Such sterilization, whether performed with or without the consent of the patient, shall be lawful and shall not render the department, its officers or employees, or any person participating in the operation liable either civilly or criminally.

and Penal Code, Section 645, which states that:

Whenever any person shall be adjudged guilty of carnal abuse of a female person under the age of ten years, the Court may, in addition to such other punishment or confinement as may be imposed, direct an operation to be performed upon such person for the prevention of procreation.

and Deering's General Laws, Act 539, which provides that whenever the resident physician of the state prison deems it to be beneficial to the physical, mental, or moral condition of any recidivist lawfully confined in such prison to be asexualized, such physician shall consult with the general superintendent of state hospitals, and the secretary of the State Board of Health, and after a joint examination into the particulars of the case the three may direct the operation to be performed. However, such operation cannot be performed unless the recidivist has been committed to a state prison at least twice for rape, seduction, etc., and has given evidence that he is a moral and sexual degenerate. The Act also provides that any minor idiot may be asexualized under the direction of the medical superintendent of any state hospital with the written consent of the parents or guardian.

Nineteen states have some statutory regulation of sterilization. The objective of eleven of these is both eugenic and therapeutic, of six purely eugenic, and of two eugenic, therapeutic and penal. Seven statutes provide both for voluntary and compulsory sterilization, seven for compulsory sterilization only, and five for voluntary sterilization only. Three-fourths of the operations throughout the country have been on the insane, one-fourth on the feeble-minded; and of the total, more than one-half have been on males.

With respect to those persons who are within the foregoing statutes (*i. e.*, feeble-minded, perverted or syphilitic persons, recidivists, rapists, and persons with inherited mental diseases), sterilization by a state agency is lawful.

II. Sterilization Outside of State Institutions

Therapeutic Sterilization.—In California there is no statute expressly granting or denying the right to perform or have performed a sterilization operation outside of state institutions. However, it would seem reasonable to conclude that, at least in so far as therapeutic sterilization is concerned, it can be performed legally under some conditions even in the absence of express permission of law. The scope of those conditions can only be ascertained or surmised by drawing analogies to similar laws. It is quite likely that the rules relating to abortions would govern since the avowed purpose to be accomplished is similar even though there is no "taking of a life" in sterilization operations. In relation to abortion, the Penal Code of California, Section 274, provides:

Every persons who provides, supplies, or administers to any woman, or procures any woman to take any medicine, drug or substance, or uses or employs any instrument or other means whatever with intent thereby to procure the miscarriage of such woman, *unless the same is necessary to preserve her life*, is punishable by imprisonment in the state prison not less than two nor more than five years.

In abortion cases it is necessary that the physician determine for himself that the patient's life will be endangered by pregnancy. There are no guide-posts to assist the physician in this determination and, therefore, as a protection to himself, consultation and approval of one or more other physicians should be obtained. Whenever this care has been taken, the physician may feel fairly certain as to his immunity. There is no case on record in which a physician has been held responsible criminally or civilly under such circumstances. As to the exact illness or condition that must be present, no suggestion can be offered, except that any physical condition which would endanger the mother's chances of surviving childbirth is undoubtedly sufficient ground for the operation. In the light of this, it can be said that sterilization of the female may properly be performed under like circumstances.

As to the male, the situation is more difficult. In *Christensen vs. Thornby*, 255 N. W. 620, Minn. 1934, the facts were as follows: A vasectomy had been performed upon a male because his wife's life would have been endangered by pregnancy. Thereafter, the physician was sued for damages on the ground that he had advised the plaintiff that the vasectomy had been successful and guaranteed sterility. Some time following the operation, however, the plaintiff's wife became pregnant and plaintiff, because of his wife's condition of health which would render childbirth dangerous, experienced anxiety and was subjected to considerable expense before and after the birth of the child. The Court, in rendering a decision in favor of the defendant physician, stated that there was nothing immoral about such an operation since most states permit the same upon the female to protect her life, and that there is no reason why the husband should not be permitted to submit to a vasectomy to protect his wife since there is much less danger involved in that operation than in a salpingectomy. The Court stated that the argument that the husband might later marry some other woman and be incapable of progeny is not sufficient to render the operation immoral. The Court stated:

Therefore, in our opinion, it was entirely justifiable for them to take the simpler and less dangerous alternative and have the husband sterilized. Such an operation does not impair, but frequently improves, the health and vigor of the patient. Except for his inability to have children, he is in every respect as capable physically and mentally as before. It does not render the patient impotent or unable "to fight for the king" as was the case in mayhem or maiming. Liability of Physicians for Sterilization Operations, Am. Bar Assn. Jour., Vol. 16 (1930), p. 158. See *Smith vs. Wayne Probate Judge*, 231 Mich. 409, 417, 204 N. W. 140, 142, 143. We, therefore, hold that under the circumstances of this case the contract to perform sterilization was not void as against public policy, nor was the performance of the operation illegal on that account.

(To be continued)